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1 Department of Real Estate
2 320 W. 4TH Street, Suite 350
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

FILED

JUL 10 2012

DEPARTMENT OF REAL ESTATE
BY: *Dorothea Valenzuela*

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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

No. H-2499 FR
2011021050

13 WEBBER NELSON & SMITH INC,)
14 CHARLES JOSEPH KELMIS, and)
15 JOSEPH CHARLES WILLIAMS,)

STIPULATION
AND
AGREEMENT

16 Respondents.)
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18 It is hereby stipulated by and between Respondent
19 CHARLES JOSEPH KELMIS, represented by Paul A. Geihs and the
20 Complainant, acting by and through James A. Demus, Counsel for
21 the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the First Amended Accusation
23 ("Accusation") filed on September 7, 2011, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

8 3. Respondent timely filed a Notice of Defense
9 pursuant to Section 11506 of the Government Code for the purpose
10 of requesting a hearing on the allegations in the Accusation.
11 Respondent hereby freely and voluntarily withdraws said Notice of
12 Defense. Respondent acknowledges that he understands that by
13 withdrawing said Notice of Defense he thereby waives the right to
14 require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that he will waive other rights
17 afforded to him in connection with the hearing such as the right
18 to present evidence in his defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interest of
22 expedience and economy, Respondent chooses not to contest these
23 allegations, but to remain silent and understands that, as a
24 result thereof, these factual allegations, without being admitted
25 or denied, will serve as a prima facie basis for the disciplinary
26 action stipulated to herein. The Real Estate Commissioner shall
27 not be required to provide further evidence to prove said factual

1 allegations.

2 5. This Stipulation is made for the purpose of
3 reaching an agreed disposition of this proceeding and is
4 expressly limited to this proceeding and any other proceeding or
5 case in which the Department of Real Estate ("Department"), the
6 state or federal government, or any agency of this state, another
7 state or federal government is a party.

8 6. It is understood by the parties that the Real
9 Estate Commissioner may adopt this Stipulation as her Decision in
10 this matter thereby imposing the penalty and sanctions on
11 Respondent's real estate license and license rights as set forth
12 in the "Order" herein below. In the event that the Commissioner
13 in her discretion does not adopt the Stipulation, it shall be
14 void and of no effect and Respondent shall retain the right to a
15 hearing and proceeding on the Accusation under the provisions of
16 the APA and shall not be bound by any stipulation or waiver made
17 herein.

18 7. The Order or any subsequent Order of the Real
19 Estate Commissioner made pursuant to this Stipulation shall not
20 constitute an estoppel, merger or bar to any further
21 administrative or civil proceedings by the Department of Real
22 Estate with respect to any matters which were not specifically
23 alleged to be causes for Accusation in this proceeding but do
24 constitute a bar, estoppel and merger as to any allegations
25 actually contained in the Accusation against Respondent herein.

26 8. Respondent understands that by agreeing to this
27 Stipulation, Respondent agrees to pay, pursuant to Business and

1 Professions Code Section 10148, the cost of the audit which led
2 to this disciplinary action. The amount of said cost is
3 \$8,152.11.

4 9. Respondent has received, read, and understands the
5 "Notice Concerning Costs of Subsequent Audit." Respondent
6 further understands that by agreeing to this Stipulation, the
7 findings set forth below in the Determination of Issues become
8 final, and the Commissioner may charge Respondent for the cost of
9 any subsequent audit conducted pursuant to Business and
10 Professions Code Section 10148 to determine if the violations
11 have been corrected. The maximum cost of the subsequent audit
12 will not exceed \$8,152.11.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing, it is stipulated and agreed
15 that the following determination of issues shall be made:

16 The conduct of CHARLES JOSEPH KELMIS as described in
17 Paragraph 4, hereinabove, is a basis for discipline of
18 Respondent's license and license rights pursuant to Business and
19 Professions Code ("Code") Sections 10177(d), 10177(g) and
20 10177(h) for violation of Code Sections 10145 and 10159.2 and
21 Section 2725 of Title 10, Chapter 6, California Code of
22 Regulations.

23 ORDER

24 WHEREFORE, THE FOLLOWING ORDER is hereby made:

25 I.

26 All licenses and licensing rights of Respondent CHARLES
27 JOSEPH KELMIS, under the Real Estate Law are revoked; provided,

1 however, a restricted real estate broker license shall be issued
2 to Respondent pursuant to Section 10156.5 of the Business and
3 Professions Code, if Respondent makes application therefore and
4 pays to the Department the appropriate fee within 90 days from
5 the effective date of this Decision.

6 The restricted license issued to Respondent shall be
7 subject to all of the provisions of Section 10156.7 of the
8 Business and Professions Code and to the following limitations,
9 conditions and restrictions imposed under authority of Section
10 10156.6 of that code:

11 1. The restricted license issued to Respondent may be
12 suspended prior to hearing by Order of the Real Estate
13 Commissioner in the event of Respondent's conviction or plea of
14 nolo contendere to a crime which is substantially related to
15 Respondent's fitness or capacity as a real estate licensee.

16 2. The restricted license issued to Respondent may be
17 suspended prior to hearing by Order of the Real Estate
18 Commissioner on evidence satisfactory to the Commissioner that
19 Respondent has violated provisions of the California Real Estate
20 Law, the Subdivided Lands Law, Regulations of the Real Estate
21 Commissioner, or conditions attaching to this restricted
22 license.

23 3. Respondent shall not be eligible to apply for the
24 issuance of an unrestricted real estate license nor for the
25 removal of any of the conditions, limitations or restrictions
26 of a restricted license until two years have elapsed from the
27 effective date of this Decision.

1 4. Respondent shall, within nine months from the
2 effective date of this Decision, present evidence satisfactory
3 to the Real Estate Commissioner that Respondent has, since the
4 most recent issuance of an original or renewal real estate
5 license, taken and successfully completed the continuing
6 education requirements of Article 2.5 of Chapter 3 of the Real
7 Estate Law for renewal of a real estate license. If Respondent
8 fails to satisfy this condition, the Commissioner may order the
9 suspension of the restricted license until the Respondent
10 presents such evidence. The Commissioner shall afford
11 Respondent the opportunity for a hearing pursuant to the
12 Administrative Procedure Act to present such evidence.

13 5. Pursuant to Section 10148 of the Business and
14 Professions Code, Respondent shall pay the Commissioner's
15 reasonable cost for: a) the audit which led to this disciplinary
16 action and b) a subsequent audit to determine if Respondent has
17 corrected the trust fund violations found in the Determination of
18 Issues. In calculating the amount of the Commissioner's
19 reasonable cost, the Commissioner may use the estimated average
20 hourly salary for all persons performing audits of real estate
21 brokers, and shall include an allocation for travel costs,
22 including mileage, time to and from the auditor's place of work
23 and per diem. Respondent shall pay such costs within 60 days of
24 receiving an invoice from the Commissioner detailing the
25 activities performed during the audit and the amount of time
26 spent performing those activities. The Commissioner may, in his
27 discretion, vacate and set aside the stay order, if payment is

1 not timely made as provided for herein, or as provided for in a
2 subsequent agreement between the Respondent and the Commissioner.
3 The vacation and the set aside of the stay shall remain in effect
4 until payment is made in full, or until Respondent enters into an
5 agreement satisfactory to the Commissioner to provide for
6 payment.

7 6. Respondent shall not be the designated officer of
8 any licensed real estate corporation while licensed as a
9 restricted real estate broker.

10 II

11 Respondent CHARLES JOSEPH KELMIS shall within six (6)
12 months from the effective date of the Decision herein, take and
13 pass the Professional Responsibility Examination administered by
14 the Department including the payment of the appropriate
15 examination fee. If Respondent CHARLES JOSEPH KELMIS fails to
16 satisfy this condition, the Commissioner may order suspension of
17 Respondent CHARLES JOSEPH KELMIS's license until Respondent
18 passes the examination.

19 III

20 Respondent CHARLES JOSEPH KELMIS shall, within six(6)
21 months from the effective of the Decision herein, provide proof
22 satisfactory to the Commissioner of restitution of all property
23 management funds owed by WEBBER NELSON & SMITH named in the
24 Accusation as follows: \$10,287 to Ines Monguio, \$19,976 to Steve
25 Benakovich, \$2,989 to Rafael Rosas, \$1,800 James P. Gentry,
26 \$2,230 to Dan Larsen and \$2,300 to Josephine Brown. If
27 Respondent fails to satisfy this condition, the Commissioner may

1 order suspension of Respondent's license until Respondent
2 provides proof satisfactory to the Commissioner.

3 IV

4 Respondent shall, prior to and as a condition of the
5 issuance of the restricted license, submit proof satisfactory to
6 the Commissioner, of having taken and successfully completed the
7 continuing education course on trust fund accounting and handling
8 specified in paragraph (3) of subdivision (a) of Section 10170.5
9 of the Business and Professions Code. Proof of satisfaction of
10 this requirement includes evidence that respondent has
11 successfully completed the trust fund account and handling
12 continuing education course within 120 days prior to the
13 effective date of the Decision in this matter.

14 V

15 All proof of payment and completed coursework shall be
16 submitted to Department Counsel James A. Demus, Attention: Legal
17 Section, Department of Real Estate, 320 W. Fourth St., Suite 350,
18 Los Angeles, California 90013-1105, on or before the dates set
19 forth above.

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22 DATED: 5/30/12

James A. Demus
JAMES A. DEMUS, Counsel for
the Department of Real Estate

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24 * * *

25 EXECUTION OF THE STIPULATION

26 I have read the Stipulation and discussed it with my
27 counsel. Its terms are understood by me and are agreeable and

1 acceptable to me. I understand that I am waiving rights given to
2 me by the California Administrative Procedure Act (including but
3 not limited to Sections 11506, 11508, 11509 and 11513 of the
4 Government Code), and I willingly, intelligently and voluntarily
5 waive those rights, including the right of requiring the
6 Commissioner to prove the allegations in the Accusation at a
7 hearing at which I would have the right to cross-examine
8 witnesses against me and to present evidence in defense and
9 mitigation of the charges.

10 Respondent can signify acceptance and approval of the
11 terms and conditions of this Stipulation by faxing a copy of its
12 signature page, as actually signed by Respondent, to the
13 Department at the following telephone/fax number: James A. Demus
14 at (213) 576-6917. Respondent agrees, acknowledges and
15 understands that by electronically sending to the Department a
16 fax copy of Respondent's actual signature, as it appears on the
17 Stipulation, that receipt of the faxed copy by the Department
18 shall be as binding on Respondent as if the Department had
19 received the original signed Stipulation.
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21
22 DATED: May 23, 2012

Charles Joseph Kelmis

CHARLES JOSEPH KELMIS Respondent

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25 DATED: May 23, 2012

Paul A. Geihs

PAUL A. GEIHS
Attorney for Respondents

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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent CHARLES JOSEPH KELMIS and
shall become effective at 12 o'clock noon on
AUG 09 2012, 2012.

IT IS SO ORDERED July 1, 2012.

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel